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JAMES H. MCKENNEY,
Clerk

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

UNITED STATES OF AMERICA, appellant,
v.
BUTTE ROCK DEVELOPMENT COMPANY, a corporation; Anaconda Mining Company, a corporation; Anaconda Copper Company, a corporation; Anaconda Copper Mining Company, a corporation; Margaret P. Daly; Margaret P. Daly, as executrix of the last will and testament of Marcus Daly, deceased; John R. Toole; William W. Dixon; William Scallon, and Daniel J. Hennessey, appellees.

No. 223

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

UNITED STATES OF AMERICA, appellant, *v.* BITTER ROOT DEVELOPMENT COMPANY, a corporation; Anaconda Mining Company, a corporation; Anaconda Copper Company, a corporation; Anaconda Copper Mining Company, a corporation; Margaret P. Daly; Margaret P. Daly, as executrix of the last will and testament of Marcus Daly, deceased; John R. Toole, William W. Dixon, William Scanlon, and Daniel J. Hennessey, appellees.	No. 227.

MOTION TO ADVANCE.

The Solicitor-General, on behalf of the United States, respectfully moves the court to advance this cause on the docket and to assign it for hearing at as early a date as the convenience of the court will permit.

STATEMENT OF THE CASE.

The Government, in February, 1903, filed its bill in the Circuit Court of the United States for the District of Montana, alleging that the several defendants, by conspiracy, have appropriated upward of two million dollars, the proceeds of timber cut and removed from public lands, which was subsequently manufactured into lumber and sold.

That in order to conceal, but accomplish, his purpose, Marcus Daly, aided by the other defendants, under the name of the Bitter Root Development Company, at certain times during the several years of said depredations, which extended from the year 1890 to the year 1900, applied for and obtained from the proper officers of the Government permits to cut upon small portions of the tracts described in the bill; and under cover of the same not only cut and manufactured the timber growing upon the lands included in such permits but entered upon large tracts of land adjacent, cut and manufactured the timber growing thereon, sold the product to persons unknown to complainant, and appropriated and divided the proceeds in ways unknown except to themselves.

That such permits were authorized by section 8 of the act of Congress of March 3, 1891 (26 Stat., 1095, 1099), to "Repeal timber culture laws," and by prior acts.

These permits contained the conditions that all rights and privileges under them were to expire at certain dates; that no trees should be cut or removed less than 16 inches in diameter; that not more than 50 per cent of the timber growing thereon might be cut from each acre embraced within the permit; that report should be made monthly of the amount and kinds of timber taken during the month, with a description of the tracts from which cut, stating how the timber was disposed of and to whom; and that no timber cut under the permit should be cut or removed for transportation out of the State of Montana.

The bill avers that said permits were used simply as cloaks to cover the fraudulent acts of the defendants, by which an immense territory of the complainant was denuded of its valuable timber.

The prayer is that each of the defendants be decreed to hold in trust for the use and benefit of complainant so much of their estate, both real and personal, as shall have come to them, or either of them, directly from the proceeds of the alleged fraudulent conversion of the timber of complainant; that complainant recover from each of the defendants the profits each received by reason of such fraudulent operations upon the said public lands described; that each of the defendants be required to discover and disclose concerning their fraudulent transactions and operations, and that an accounting be taken by the court of the same; that the defendants be required to produce all licenses, permits, and all other documents received from complainant by which they claimed to cut and remove timber from complainant's lands, and that defendants account for logs received and manufactured at their several mills and the profits which they or either of them received or made from unlawfully cutting upon lands of complainant as stated in the bill. There are other prayers for discovery and accounting and the usual prayer for general relief.

The defendants demurred to the bill. The Circuit Court sustained the demurrer and dismissed the bill, without opinion. From this decree complainant appealed to the Circuit Court of Appeals for the Ninth

Circuit, which court affirmed the decree of the lower court (133 Fed., 274). Complainant has prosecuted an appeal to this court.

The motion to advance is submitted for the reason that the question involved is as to the forum in which this claim shall be prosecuted. The Government insists that because of the manner in which the operations were carried on it can only obtain adequate relief in equity; the defendants insist that complainant must be confined to its actions at law.

It is essential, if the Government is to hope to recover the value of its timber so taken, that the question be settled at an early date. The acts were committed between 1890 and 1900, and had long been committed before the frauds were discovered. Some of the defendants are dead; the witnesses are growing old, dying, and moving out of the jurisdiction; time is changing the physical conditions of the land; and because of all these facts it is becoming more and more difficult to preserve the testimony which the Government has, or which it may by proper process obtain.

For these reasons the Government desires that the question of jurisdiction be settled at an early date.

The Government further requests that if this motion and the motion to advance the case of *United States* v. *William A. Clark* are granted, the cases be assigned for argument on the same date.

HENRY M. HOYT,
Solicitor-General.

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